

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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*SILAS CALHOUN and EMILY CALHOUN, *
Individually and as Parents and *
Next Friends of ESTELLA CALHOUN *
Plaintiffs * CIVIL ACTION
vs. * No. 04-10480-RGS
*
*UNITED STATES OF AMERICA *
Defendant *
* * * * *

BEFORE THE HONORABLE RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE
CIVIL BENCH TRIAL, DAY 1
April 9, 2007

APPEARANCES:

SUGARMAN, ROGERS, BARSHAK & COHEN, P.C., (By
Michael S. Appel, Esq.) 101 Merrimac Street, Boston,
Massachusetts 02114-4737, on behalf of Plaintiffs

UNITED STATES ATTORNEY'S OFFICE, (By AUSA Anton P.
Giedt and AUSA Karen Goodwin) J. Joseph Moakley
Courthouse, 1 Courthouse Way, Suite 9200, Boston,
Massachusetts 02210, on behalf of Defendants

Courtroom No. 2
1550 Main Street
Springfield, Massachusetts 01103

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1 saying that the child has some deficits but not as grave --

2 MR. GIEDT: Not as grave and explainable by
3 other clinical observational factors, as well as sources, if
4 you will.

5 THE COURT: All right.

6 Mr. Appel, your first witness.

7 MR. APPEL: Your Honor, I call Emily Calhoun.

8 EMILY JANE CALHOUN, sworn

9 DIRECT EXAMINATION

10 BY MR. APPEL

11 Q Would you state your name, please.

12 A Emily Jane Calhoun.

13 Q Where do you currently live?

14 A In Hawaii.

15 Q And where in Hawaii do you live?

16 A Schofield Barracks.

17 Q Schofield Barracks is an Army base on the island of --

18 A Oahu.

19 Q Oahu?

20 A Yes.

21 Q Where were you born?

22 A Boston, Massachusetts.

23 Q And did you grow up in Brookline?

24 A Yes.

25 Q Did you attend the public schools in Brookline?

1 A Yes.

2 Q What is your mother's name?

3 A Judith Anne Burnim.

4 Q And your father's name?

5 A Randolph James Leon.

6 Q At some point did your parents become divorced when you
7 were much younger?

8 A Yes.

9 Q And did your mother remarry?

10 A Never remarried, but she has been with the same person
11 for over 20 years.

12 Q Do you have any siblings?

13 A Not whole.

14 Q So no birth siblings by the marriage of Judith and
15 Randolph?

16 A Correct.

17 Q Were there any half-siblings that you grew up with?

18 A Yes.

19 Q And how many?

20 A Two.

21 Q During elementary school or high school for that matter,
22 did you ever receive any special education services?

23 A No.

24 Q Did anybody ever diagnose you with a learning
25 disability?

1 A No.

2 Q Did anybody ever tell you, any professional or school
3 official, that you had behavioral problems?

4 A No.

5 Q No ADHD, attention deficit hyperactivity disorder?

6 A No.

7 Q Did you receive any counseling whatsoever during the
8 years that you were in either elementary school or high
9 school?

10 A No.

11 Q To your knowledge, was there any history of any learning
12 disability, any attentional problems or any behavioral
13 problems in your parents' family?

14 A No.

15 Q When did you graduate from Brookline High School?

16 A In 1994.

17 Q What did you do after you graduated from Brookline High?

18 A Attended Northeastern University.

19 Q Did you complete a degree at Northeastern?

20 A Yes.

21 Q When was that?

22 A I graduated in 1998.

23 Q What was your degree? What was the degree awarded to
24 you?

25 A Bachelor of Science in communications.

1 Q Just generally, Emily, what kind of student were you
2 both in high school and college?

3 A B, a B student.

4 Q When did you meet your husband, Silas?

5 A Silas and I met while attending Northeastern, I would
6 say about 1995, '96.

7 Q When did the two of you get married?

8 A 1999.

9 Q After you got married, did you continue to live in
10 Massachusetts?

11 A No.

12 Q Where did you move to?

13 A Well, we got married in Alabama. We were living in
14 Georgia.

15 Q Is that because of Silas' military assignments?

16 A Correct.

17 Q You did move back up to Massachusetts at some point?

18 A Correct.

19 Q When was that?

20 A Silas had an assignment to go to Korea, and I couldn't
21 go with him. So I went home.

22 Q Was your understanding that you couldn't go because his
23 assignment did not allow dependants to come along with him?

24 A Correct.

25 Q When did you become pregnant with Estella?

1 A She had one while we were still in the hospital.

2 Q The day at the hospital, did the doctors explain to you
3 what the bowel movements were called and what they looked
4 like?

5 A Yes. It was like black tar. They call it meconium.

6 Q Did Estella have a meconium stool while at the hospital?

7 A Yes.

8 Q Did she have any other stools after that one stool?

9 A No.

10 Q As a result of that, what action did you take?

11 A On Monday I made an appointment with the Hanscom clinic.

12 Q Now, did you go to that first appointment?

13 A Yes. That was on Tuesday.

14 Q That would have been February 29th?

15 A Correct.

16 Q Was Silas with you at the time?

17 A Yes.

18 Q When you first came into the base clinic, what was the
19 situation? Did you see the doctor right away, or were there
20 other staff that you first saw?

21 A First you do the medical records, and then you go to the
22 vitals, the vital room.

23 Q And there was a separate room where somebody took the
24 baby's vital signs?

25 A Correct.

1 Q And did you observe the -- was it a -- excuse me.
2 Strike that.

3 Was it a technician? Do you remember the person
4 who took the vitals?

5 A It was a technician.

6 Q Do you remember what he looked like?

7 A Yes.

8 Q Could you describe him?

9 A Average size white male.

10 Q What did you notice about how he took the vitals?

11 A We had just -- he just took her out of the car seat and
12 put her on the scale.

13 Q Did he take her clothing off before putting her on the
14 scale?

15 A No.

16 Q What was she wearing at the time?

17 A On that day she had on a baby hat, a onesie, a baby
18 gown, a baby sack, her diaper, her booties and two blankets.

19 Q I have some articles of clothing. And understanding
20 that these are not the exact items --

21 A Correct.

22 Q You don't have those any longer, correct?

23 A No.

24 Q But just for the sake of showing the Court what these
25 items look like, was this the kind of standard-issued baby

1 blanket?

2 A Yes.

3 Q And she had two of these?

4 A Correct.

5 Q Like this?

6 A Yes.

7 Q Was it a very cold day out, by the way?

8 A It was snowing that day.

9 Q She had a diaper?

10 A Yes.

11 Q Is this the kind of standard-issued hospital cap that
12 she had on?

13 A Yes.

14 Q Also had some socks on, did you say?

15 A Correct.

16 Q Is this a facsimile of what you would call a "onesie"?

17 A That's a onesie, yes.

18 Q Is this the sack that she had on?

19 A No, that's the baby gown.

20 Q That's the gown?

21 A Yes.

22 Q Is this the sack that you --

23 A Yes. That's a baby sack. It's a little bit bigger than
24 she would wear.

25 Q Correct. It was something like this but it was smaller

1 than this?

2 A Yes.

3 Q After she was weighed, what happened? What do you
4 recall?

5 A We went back to see Dr. Daub.

6 Q Had you ever had any contact with Dr. Daub before?

7 A No.

8 Q Did you have any knowledge of who he was?

9 A No.

10 Q What did you tell Dr. Daub?

11 A I told Dr. Daub my concerns about Estella crying at the
12 breast and not staying on the breast for long. I also told
13 him that I was concerned that she had not had a bowel
14 movement since she left the hospital.

15 Q What did Dr. Daub do with Estella?

16 A He examined her.

17 Q Did he say anything to you about the feeding or stools?

18 A He told me that from what he observed she was
19 breast-feeding well, and he told me to stick with it, it can
20 be hard in the beginning, and not to worry about the bowel
21 movements because newborns don't have regular bowel
22 movements that are breast-fed.

23 Q Now, when you brought the baby in, did you notice the
24 baby's color a little bit different as well?

25 A Not until it was pointed out to me.

1 the vitals, was there another technician who you met that
2 day?

3 A Correct.

4 Q Can you describe what he looked like?

5 A A smaller-sized Asian man.

6 Q Did you observe him weighing Estella on that day?

7 A Yes.

8 Q And what did you observe?

9 A Put her on the scale with her clothes on again.

10 Q Do you recall exactly what she was wearing on that day?

11 A On that day she had on a hat, onesie, a baby gown
12 similar to what she had on the day before, a diaper and
13 socks. Possibly a blanket. I'm not sure about the blanket.

14 Q After she was weighed, did you also see Dr. Daub that
15 day?

16 A Yes.

17 Q What did you tell him that day?

18 A I told Dr. Daub that she had had a meconium stool the
19 night before, and we were all happy that that happened,
20 Silas and I more so. The happiest we've ever been to see a
21 poop.

22 And I told him again about my concerns about the
23 breast feeding, and he said that we were going to run the
24 bilirubin test again for her.

25 Q Incidentally, on either day, on the first day or the

1 twitching episodes. Her arm, her left arm, begin to twitch.

2 Q And what did you do when you saw that?

3 A I made an appointment to go see Dr. Coleman at Hanscom
4 clinic.

5 Q Did you bring Estella over right away that morning?

6 A Yes.

7 Q And what happened when you saw Dr. Coleman?

8 A When I saw Dr. Coleman, I explained to him that the
9 twitching -- he actually observed the twitching twice and
10 told me it was normal infant behavior, kind of like when you
11 fall asleep and you think you're falling off a cliff and you
12 startle yourself. That's how he explained it to me. He
13 told me at this point she's going to be considered a well
14 baby.

15 Q That morning did he schedule for any other care?

16 A No.

17 Q What happened after you left the clinic that morning?

18 A Continuous twitching, and it continued on to -- her
19 whole left side began to twitch, her legs, her eyes and her
20 arm.

21 Q How did you respond to that? What did you do?

22 A We went to Children's Hospital.

23 Q Did you first discuss this and show this to Silas?

24 A Yes, I -- when Silas got home, I -- he had been gone the
25 whole day, and he had not seen the twitches.

1 I showed it to him, and I said, The doctor said
2 this was normal.

3 And Silas said, We need to go to the hospital to
4 double check it.

5 Q And then did the two of you then take Estella to
6 Children's Hospital in Boston?

7 A Yes.

8 Q What happened when you arrived at Children's Hospital?

9 A When we arrived at Children's Hospital, we learned that
10 the twitching was, in fact, seizures, and she was no longer
11 breathing during the seizures. And they were -- she was
12 having continuous seizures that they could not get under
13 control at that time. So she was going to have to be
14 admitted to the NICU.

15 Q By the NICU you mean the neonatal intensive care unit?

16 A Yes.

17 Q Did doctors tell you anything more about her condition?

18 A We later learned that she had suffered brain damage due
19 to the dehydration, and they weren't sure at that time the
20 extent of the brain damage. They knew that it was serious.
21 They weren't sure she was going to make it through the next
22 24 to 48 hours, and they explained to us that if she did
23 make it, there was a big chance she would be paralyzed.

24 Q At some point did you get to speak with Dr. Andre du
25 Plessis?

1 A Yes.

2 Q Who Dr. du Plessis?

3 A He was a neurologist that was caring for Estella while
4 she was in the NICU.

5 Q Did you have an opportunity, that is, you and Silas, to
6 actually sit down and speak with Dr. du Plessis at some
7 later time while Estella was still hospitalized?

8 A Yes.

9 Q Did he explain to you what was going on with Estella?

10 A Yes.

11 Q What did you learn from him?

12 A We learned a lot from him. He drew out on the dry
13 eraser board the brain and what damage she had suffered. He
14 explained to us the clot and the extent of it and the
15 hemorrhage. He explained to us that he could not put her on
16 medication because the medication they would give for clots
17 is a brain [sic] thinning medication and -- I'm sorry,
18 blood-thinning medication. And since she had already had
19 the hemorrhage, they had to rule that medication out.

20 Silas and I at this point were mainly concerned
21 with what to expect if Estella came home with us. We didn't
22 know what -- was she going to be able to move? Was she
23 ever -- I mean, we didn't know what to expect, and he had
24 told us the main things we would look for are the unevenness
25 on each side of her body and, later in life, learning

1 disabilities.

2 Q At some point after a few days you were able to take
3 Estella home?

4 A Correct.

5 Q Did you speak, by the way, at Children's Hospital with
6 Dr. Coleman again?

7 A Yes.

8 Q And what was the substance and nature of the
9 conversation that you had with Dr. Coleman at that time?

10 MS. GOODWIN: Objection.

11 Your Honor, can I just indicate the basis of my
12 objection to these questions?

13 THE COURT: Yes.

14 MS. GOODWIN: I'm objecting to the hearsay
15 nature. I don't have an objection to the extent the answers
16 are being used to show what she did or why she did it. But
17 with respect to the truth of what these doctors are saying
18 to the plaintiff, I believe that they're straight hearsay
19 and not admissible.

20 THE COURT: I'm interested in her account of
21 what happened. I do understand the difference between
22 expert opinion that goes to issues of liability and what a
23 layperson is trying to report of what they were told, and I
24 will keep that distinction in mind.

25 BY MR. APPEL